IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Kamlesh Kumar Garg & Anr. Vs. State of Rajasthan & Anr.

S.B.CR. MISC. PETITION NO.442/2005

DATE OF ORDER :: November 11, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Himanshu Shrimalee, for the petitioners.
Mr.Ashok Upadhyaya, Public Prosecutor for the State.
Mr.P.K.Lohra, for respondent No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners seek quashing of FIR No.194/2004 dt. 11.5.2004, Police Station, Pratap Nagar, Bhilwara for the offences under sections 406, 409 and 420 I.P.C.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioners that after lodging the FIR, the petitioners have settled the dues with respondent No.2 Bank by a compromise in the bank account

maintained by the petitioners by depositing the amount agreed by compromise between the petitioners and respondent No.2, Chief Manager, S.B.B.J., Industrial Estate, Pur Road, Bhilwara and, therefore, seek quashing of FIR.

Learned Public Prosecutor appearing for the State submits that on plain reading of the FIR, the FIR discloses the commission of the cognizable offences and, therefore, subsequent to the FIR, if at a later stage, any amount has been deposited with the Bank, it cannot be said that the offences have not been committed on the date of lodging of the FIR. It appears that cash credit limit on 30 lac was sanctioned in favour of the petitioners on 16.1.1999 by the respondent No.2 and an agreement was entered into by the petitioners with the Bank with regard to the purchase of the goods and material to remain hypothecated and hypothecated goods were entrusted to the petitioner by bank, the first informant, which according to the FIR, the petitioners committed criminal breach of trust in respect of the hypothecated goods.

On perusal of the FIR, the essential ingredients of commission of the offences noticed above have been disclosed and same are the cognizable offences. The occurrence is of May, 2004, whereas the alleged compromise between the respondent-

bank and the petitioners has been arrived at almost after two years and, therefore, the criminal intent of the petitioners in committing the offences mentioned in the FIR cannot be washed away by depositing of the amount after lapse of two years.

In State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors., **AIR 1992 SC 604,** the Hon'ble Supreme Court enumerated certain guidelines and held that in following categories, the High Court may in exercise of powers under Art. 226 or S.482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of Justice. However, power should be exercised sparingly and that too in the rarest of rare cases.

> "1)Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
> 3) Where the uncontorverted allegations made in the FIR or

complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The instant case does not fall in either of the categories enumerated hereinabove by the Hon'ble Supreme Court in State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. (supra) and it cannot be said that the FIR does not disclose the commission of

cognizable offences or it is absurd or barred by any provision of law or sufferes from malafide. In this view of the matter, no case for quashing of FIR is made out.

The petition is accordingly dismissed.

[H.R.PANWAR],J.

m.asif/-